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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking Regarding the Implementation of the Suspension of Direct Access Pursuant to Assembly Bill 1X and Decision 01-09-060	)	Rulemaking 02-01-011 (January 9, 2002)

REPLY COMMENTS OF THE CALIFORNIA MUNICIPAL UTILITIES ASSOCIATION

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April 24, 2007

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The California Municipal Utilities Association ("CMUA") provides the following comments in reply to opening comments filed by Pacific Gas and Electric Company ("PG&E") on the proposed decision of Administrative Law Judge ("ALJ") Pulsifer ("Proposed Decision"). As stated in CMUA's opening comments, the Proposed Decision rightly clarifies and resolves the two issues raised in PG&E's petition to modify D.06-07-030, as follows: (1) PG&E may not determine the Department of Water Resources ("DWR") Power Charge on a residual basis and without regard to the actual DWR Power Charge obligation and (2) negative indifference amounts should be used to offset positive indifference amounts.

A. The Commission Should Disregard PG&E's Erroneous Claim That Non-bundled Customers Will Not Pay The Same DWR Power Charge Rates

PG&E's refrain throughout its comments is that "the [Proposed Decision] should be modified to provide that all non-exempt, non-bundled load…pay the same, already adopted DWR power charge…." (PG&E Comments at 6.) PG&E confounds the issue. PG&E would have the Commission believe that an interim "collection methodology" (namely, the 2.7 cents/kWh tops-down collection methodology) is the same thing as an actual "rate." As rightly reflected in the Proposed Decision, the proper "rate" comparison for ***all*** non-bundled customers is to the actual DWR Power Charge obligation attributable to such customers, which is to be finalized through the

Total Portfolio Indifference calculation. In this key respect, the Proposed Decision clearly does treat all non-bundled customers the same.

Unlike PG&E, the Proposed Decision rightly acknowledges that past Commission decisions do not portray the 2.7 cents/kWh cap as a "rate" but rather as an interim collection methodology. For example, the Proposed Decision states that "[i]n D.02-11-022, [the Commission] explained that the 2.7 cents/kWh cap was not intended to represent a specific quantification of DWR Power Charges but rather serve as a placeholder limiting annual charges until undercollections were paid down…." (Proposed Decision at 9.) As such, the 2.7 cents/kWh cap is not a rate. Instead, the "rate" is determined with reference to actual DWR Power Charge obligations, as noted in the Proposed Decision: "By contrast to the 2.7 cents/kWh cap which functioned as a placeholder, the actual DWR Power Charge obligation was to be finalized through the Total Portfolio Indifference calculation…." (*Id.*)

For Direct Access customers, the finalization of the actual DWR Power Charge obligation has occurred. This finalization has not yet occurred for non-exempt MDL customers. However, when such finalization does occur, as directed in ordering paragraph 4 of the Proposed Decision, it will reflect the same rate – a rate that, as with direct access customers, reflects "the actual Total Portfolio Indifference amount attributable to that category of customers." (*Id.* at 10.) Accordingly, the Proposed Decision will result in the same rate being applied to MDL customers as was applied to direct access customers.

B. PG&E's Definition Of "Fairness" Is Flawed

PG&E represents that "[t]he approach recommended by PG&E treats all customers fairly. (PG&E Comments at 3.) PG&E would have the Commission believe that its "approach treats all non-bundled load equally, and therefore fairly." (*Id.* at 6.) PG&E is wrong; equality in one respect, but not all other key respects, does not constitute fairness. PG&E's approach focuses only on part

of the equation, not on the entirety of the equation, namely, whether the amount being collected over time results in zero undercollections.

PG&E's approach may be fair for direct access customers because "[f]or DA customers, the Working Group reached agreement that CRS undercollections reached zero as of June 30, 2006." (Proposed Decision at 11.) This approach worked because "[a]s explained in D.02-11-022, total CRS requirements were expected to produce an overcollection when the 2.7 cents/kWh cap was first adopted, but in subsequent years to yield a surplus to pay down the prior undercollection." (*Id.* at 22; Finding of Fact 8.) However, PG&E's supposedly "equal" treatment is not fair for MDL customers since "[t]he Working Group, however, did not reach agreement that CRS collections under the 2.7 cents cap would result in a zero undercollection attributable to MDL customers as of June 30, 2006." (*Id.* at 11.)

Accordingly, the determination of what is fair does not merely involve an examination of the amount being collected (2.7 cents/kWh), as PG&E would have the Commission believe. Rather, the determination of what is fair involves an examination of ***both*** the amount being collected ***and*** the period of time over which such amount is being collected in order to result in zero CRS undercollections. In the end, both these factors (the amount being collected and the period of time) need to work together to effect a ***"true-up"*** in order "to reconcile the CRS amounts collected and the corresponding actual indifference costs attributable to such customers." (*Id.* at 13.) PG&E's approach does not do this, and is rightly rejected in the Proposed Decision.

C. PG&E Cannot And Should Not Speak For The DA Agreement Parties

In its comments, PG&E chooses not to address the substance of the Proposed Decision's multi-page reasoning and conclusions as to ***why*** "in order to maintain indifference, both positive and negative indifference effects must still be tracked, with the negative amounts offsetting positive amounts." (Proposed Decision at 19.) Instead, PG&E chooses to speak on behalf of the DA

Agreement Parties and proffer evidence as to the intent of such parties. PG&E states unreservedly that "[t]he DA Agreement Parties did not intend for indifference to be tracked once the undercollection was recovered." (PG&E Comments at 8.) PG&E's ex parte representations are inappropriate, easily contradicted, and ought to be wholly disregarded by the Commission.

The "DA Agreement Parties" consist of PG&E, Southern California Edison Company ("SCE"), Alliance for Retail Energy Markets ("AReM"), California Large Energy Consumers Association, California Manufacturers & Technology Association, The Utility Reform Network and the Division of Ratepayer Advocates. (*See* Working Group Report at 5.) First, none of the other DA Agreement Parties join in PG&E's comments, nor did any of them authorize PG&E to make statements on their behalf. Even the other investor-owned utility among the DA Agreement Parties, SCE, does not join in PG&E's comments, nor did it offer any comments of its own opposing the Proposed Decision's treatment of the use of negative indifference amounts.

Second, one of the key DA Agreement Parties, AReM, clearly holds a view diametrically opposed to PG&E's interpretation on the issue of whether negative indifference amounts may be offset against positive indifference amounts. The Commission may take notice of AReM's recent submission in R.06-02-017 in which AReM contradicts the position expressed by PG&E in its comments. Specifically, AReM states

> "First in D.05-12-045 and then again in D.06-07-030, the Commission ruled that negative stranded costs may be netted against positive stranded costs within the same rate element over time as long as they do not result in cash payments to departing customers…For consistency and fairness, this same principle should also be applied to any stranded cost surcharges that are imposed in this proceeding. PG&E's proposal is in direct opposition to this principle."[1]

Third, the best that can be said is that only one of the DA Agreement Parties, PG&E, holds the view expressed by PG&E in its comments, and even this can be easily contradicted by PG&E's

[1] *Testimony on Behalf of the Alliance for Retail Energy Markets* (R.06-02-017), dated March 2, 2007, at 35-36.

prior position on this issue. As noted in the Proposed Decision, PG&E previously set forth a different interpretation on the issue of whether negative indifference amounts may be offset against positive indifference amounts. PG&E previously stated that "negative indifference amounts recorded and tracked in the memorandum account will be eligible to be applied prospectively to offset future positive indifference amounts." (Proposed Decision at 17-18, citing PG&E Advice Letter 2871-E.) It seems hard for PG&E to argue with itself when the Proposed Decision agrees with PG&E's original interpretation, stating that "this clarification, as reflected previously in the proposed language above from PG&E's Advice Letter 2871-E, is the proper treatment consistent with the principle that bundled customers be kept indifferent with respect to DWR Power costs applicable to DA or DL customers." (*Id.* at 18.)

The Commission should wholly disregard PG&E's ex parte representations on, and its new interpretation of, the issue of whether negative indifference amounts may be offset against positive indifference amounts.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that the following is true and correct:

On April 24, 2007, I caused to be served an electronic copy of the attached:

Reply Comments
Of The California Municipal Utilities Association

on all known parties to R.02-01-011, or their attorneys of record, for whom an e-mail address has been provided. I served a copy of the document on those without e-mail addresses by mailing the document by first-class mail addressed as follows:

See attached service list

Executed this 24th day of April, 2007, at Sacramento, California.

Vicki Ferguson

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